

COFECE-023-2020

## **COFECE files a constitutional controversy against the issuance of the *Policy for reliability, security, continuity and quality in the National Electric System***

**Mexico City, June 22, 2020.-** The Mexican Federal Economic Competition Commission (COFECE or Commission) filed a constitutional controversy before the Supreme Court of Justice of the Nation as it considers that the *Policy for reliability, security, continuity and quality in the National Electric System (Policy)* issued by the Ministry of Energy in the Federal Official Gazette (DOF, as per its initials in Spanish) in May 15, 2020, undermines the fundamental principles of competition and free market access ordered in the Political Constitution of the United Mexican States, as it affects its constitutional mandate and breaches its sphere of competence.

COFECE considers that the *Policy* is contrary to the contents of articles 16, 28 and 133 of the Constitution, as well as to the applicable laws on electricity, which together establish a competition regime for electricity generation and supply.

The instrument published in the DOF severely affects the economic structure of the electricity sector, as it eliminates any possibility for its operation in conditions of competition and efficiency, as well as under the terms set forth in the current national regulatory framework for this sector. Hence, the contested *Policy* compromises both the open and non-discriminatory access to transmission and distribution networks (an essential input in this industry), as well as the economic dispatch criterion that governs the operation of the wholesale electricity market; furthermore, it grants advantages in favour of certain participants while reducing the ability of others to compete, forfeits efficiency and establishes barriers to entry in electricity generation.

All the aforementioned, in the opinion of this authority, has a serious and significant impact on its sphere of action, as it prevents the promotion and protection of competition and free market access in the electricity market, as the basic elements for its operation in competitive conditions have ceased to exist due to enactment of the *Policy*.

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For these reasons, by filing the constitutional controversy, COFECE requests the Supreme Court of Justice of the Nation to rule on the limits that the sector regulator has concerning the constitutional principles of competition when it issues a regulation that severely affects the competitive dynamic of a market, to the detriment of the mandate that COFECE is tasked to protect and the welfare of consumers.

This authority recognizes that increasing the reliability and security of the national electrical system is a legitimate and desirable purpose. However, when other objectives, such as economic competition are also part of the constitutional mandate, it is necessary to identify the best available alternative in order to enforce all these objectives, which does not take place with the contested *Policy*.

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**MORE COMPETITION FOR A STRONGER MEXICO**

*The Federal Economic Competition Commission safeguards competition and free market access. Through this, it contributes to the people's well-being and the efficient functioning of the markets. Through its work it seeks better conditions for consumers, that more services are offered with greater quality and that there is a "level playing field" for businesses.*

